Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

LOUISE B. TRULL,

Petitioner,

v.

EZRA E. TRULL,
ETHAN E. TRULL, and
P. ANDRE KATZ,

Respondents.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois Second District

PETITION FOR A WRIT OF CERTIORARI

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34 pp

QUESTIONS PRESENTED FOR REVIEW

Did the appellate court err in its decision to ignore and thereby deny petitioner's request for a trial by jury which conflicts with the U.S. Constitution, statutes, and decisions in other courts of last resort:

A. to determine whether the alleged settlement agreement and release is valid?

and

B. to determine whether the claim of estoppel is valid?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Louise B. Trull, respectfully petitions this court for a writ of certiorari to review the Rule 23 Order of the Appellate Court of Illinois Second District, filed on June 9, 1998.

OPINIONS BELOW

The order of the Circuit Court of the 17th Judicial Circuit, Winnebago County, Illinois in case No. 97-L-74 that gave rise to the appeals, was entered June 30, 1997 in the Court file and is reprinted in the Appendix at App. 1. The Rule 23 Order of the Appellate Court of Illinois Second District Case No. 2-97-1012 that gives rise to this Petition was entered June 9, 1998 in the Court file and is reprinted in the Appendix at App. 2-12. The Illinois Supreme Court denied petition No. 86042 for leave to appeal and it was entered in the Court file on October 6, 1998 and is reprinted in the Appendix at App. 12. The Illinois Supreme Court allowed a stay of the mandate of 86042 on November 9, 1998 and it is reprinted in the Appendix at App. 13.

JURISDICTION

The order of the Circuit Court of the 17th Judicial Circuit, Winnebago County, Illinois was entered on June 30, 1997. The Rule 23 Order of the Appellate Court of Illinois Second District was entered June 9, 1998. The Illinois Supreme Court denied petition for leave to appeal

October 6, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner, Louise B. Trull, in a judgement of dissolution of marriage* that divided the couple's 20 acres of real estate in rural Rockton, Illinois, was awarded the home and buildings situated on the 5 +/- acre Homesite and respondent Ezra E. Trull was awarded the 15 +/- acres of surrounding farmland as fully set out in the stipulated appraisal by Joseph Magdziarz of Appraisal Research, Inc. Respondent Andre P. Katz, attorney for Ezra Trull, was ordered to prepare deeds reflecting the division. Respondent Ethan E. Trull, the couple's son who is an attorney but was no party to the legal action, caused a plat of survey dividing the land to be drawn by R.H. Batterman & Co., Inc., Land Surveyors, upon which deeds were prepared which Mr. Katz presented to the court with a motion for execution.

Petitioner, who was without legal council because she had no money to hire an attorney, approached the court *pro se* and objected to the deeds, saying that the division did not conform to the order of the court and the stipulated appraisal and that respondents had switched land, deleting over half of the landscaped and fenced

* The dissolution ended a 38 year marriage when Louise was age 62 and Ezra age 67. Louise was a former high school teacher who became a stay-at-home wife and mother and worked part-time in Ezra's dental office without salary. They have three grown children.

front yard of the Homestead area awarded to her and giving to her in exchange a similar amount of farmland which had been awarded to Ezra Trull east of the landscaped Homestead area. The court questioned Mr. Katz about the switch and he repeatedly stated that the deeds were correct and the court relied upon his false statements and set a date for their execution. Petitioner asked the court for time to secure council who could present evidence according to legal procedure that would prove her contention, but was denied.

Petitioner then hired an attorney anyway, Peter Savitski, and he came to court with her on the date for execution of the deeds and attempted to present a letter and drawing on an aerial view of the property from the stipulated appraiser, Mr. Magdziarz, which confirmed that the deeds do not conform to the order of the court and his appraisal, but the court ruled that it was too late to present this evidence because Judge Peterson had already ruled on the deeds. Petitioner refused to sign the deeds and the court ordered the sheriff to sign for her.

Meanwhile, petitioner had signed an employment agreement with Atty. Forest Ingram, who told her that he specialized in bankruptcies and would file a Chapter 11 in order to secure for her a long list of assets that the court had awarded to her and which Ezra had never turned over to her. This failed when the Bankruptcy court ruled that the Chapter 11 was not appropriate. Unbeknown to petitioner, Mr. Ingram and Atty. Christopher Langone, who was now representing Ezra Trull, then negotiated the alleged settlement agreement and release. Subsequently, Mr. Ingram called petitioner and told her that Mr. Langone was threatening sanctions, without

explaining why there might be any valid reason for this, and that she should sign a copy of the settlement agreement he faxed to her without discussing any of its terms, which took away everything awarded to her that had not been turned over to her, including future maintenance upon which she was dependant for her livelihood, except to tell her that she had to pay Ezra $10,000 in order to stop the threatened sanctions.

Petitioner refused, calling the scheme blackmail and told Mr. Ingram to stop his unauthorized negotiations. Mr. Ingram then changed the signature page, by typing "By Forest Ingram Her Attorney" under the signature line provided and signed his own name, without telling petitioner, and wrote a check to Mr. Langone for $10,000. When petitioner finally learned months later what Mr. Langone had done, she dismissed him and proceeded to file *pro se* Complaint No. 97-L-74, a cause of action for fraud, in Winnebago County Circuit Court where the case was assigned to Judge Steven Vecchio.

Respondents never denied the fraud, but moved to dismiss on grounds that (1) petitioner's claim is barred by the alleged settlement agreement; (2) the cause and issues raised had been previously considered and ruled upon by Judge Peterson in the circuit court and in the appellate court, claiming estoppel; and (3) the cause of action is frivolous.

Petitioner responded with (1) evidence that the settlement agreement was not valid because it had been improperly negotiated and was never authorized or signed by her; (2) evidence that estoppel is not valid because (a) Judge Peterson was also a victim of the fraud

because his ruling relied upon fraudulent misrepresentation of material facts by Atty. Katz when petitioner was denied due process when she was not permitted to secure council or present evidence that proved the deeds did not conform to the stipulated appraisal, (b) that the record shows that the appellate court refused to rule on the validity of the deeds because the issue had not been timely presented, and (c) the instant issue of fraud had never been considered previously in any court; and (3) evidence that this cause of action could not be considered frivolous where the fraudulent deeds caused material loss to petitioner of over half of her riverside front yard while it enriched Ezra Trull, who added it to the farmland he was developing into a subdivision and where he used petitioner's switched land to create a cul-de-sac and two plus part of a third lots which he advertized for sale for over $73,000. Petitioner was left with the switched farmland, now worthless because it cannot be sold since it is without public access, it is too small to farm, it is without any useful purpose to the remaining property, and it presents a costly maintenance problem. Petitioner claimed that evidence of material facts prove that the alleged settlement agreement was an extension of the fraud and that there is no issue of estoppel, and she demanded a trial by jury to decide these issues.

The record shows that Judge Vecchio relied upon the deliberate misrepresentation of material facts presented by Catherine Mathews, attorney for respondent Katz, who never appeared and so could not be cross-examined. Attorney Christopher Langone simply never made any appearance on behalf of his clients, respondents Ezra Trull and now including Ethan Trull, neither of whom

ever appeared and so could not be challenged. Thus the court became a victim of the fraud along with petitioner.

In a summary judgement, the circuit court granted respondent's motion to dismiss on June 30, 1997. Petitioner filed a motion to reconsider July 18, 1997. Motion denied, entered October 6, 1997. Petitioner filed appeal October 14, 1997, denied and filed June 9, 1998. On August 13, 1998 petitioner filed a petition to appeal to the Illinois Supreme Court, denied and filed October 6, 1998. Petitioner filed a motion to stay the mandate October 26, 1998, pending the filing of this petition for writ of certiorari, allowed November 9, 1998. There followed the instant petition for a writ of certiorari to the U.S. Supreme Court.

REASONS FOR GRANTING THE PETITION

THE APPELLATE COURT DECISION TO IGNORE AND THEREBY DENY PETITIONER'S REQUEST FOR A TRIAL BY JURY CONFLICTS WITH THE U.S. CONSTITUTION, STATUTES, AND DECISIONS IN OTHER COURTS OF LAST RESORT

(A) A JURY MUST DETERMINE WHETHER THE ALLEGED SETTLEMENT AGREEMENT AND RELEASE IS VALID

(B) A JURY MUST DETERMINE WHETHER THE CLAIM OF ESTOPPEL IS VALID.

It is well established that a dismissal at a preliminary stage of a proceeding is a drastic action and should be granted with extreme caution. It should be entered only where evidence demonstrates that no genuine issue of

fact exists which warrants trying the case. In *Peer v. MFA Milling Co.*, Mo.App. 578 S.W.2d 291, 292 (1979), the court said "A genuine issue of fact exists, precluding rendition of summary judgment, where there is the slightest doubt as to the facts, so long as the fact in doubt is a material one which has legal probative force as to a controlling issue." Disputed material facts surround the issues in this case, parallel to those in cited cases where courts of last resort have ruled that they must be tried by a jury. The court simply ignored petitioner's request for a trial by jury, never actually making any ruling on it, without giving any reason, thereby denying it.

This petition is the result of a cause of action for fraud in the preparation and execution of deeds that do not reflect the order of the court where respondents never denied the fraud, but used the alleged settlement agreement and claim of estoppel to obstruct justice and deny petitioner's right to due process by negating her cause of action for fraud through deliberate misrepresentation of facts upon which the court relied, thereby becoming a victim of the fraud along with petitioner. The validity of the disputed alleged settlement agreement and claim of estoppel must be decided by a jury before taking the drastic action of barring the undisputed cause of action for fraud.

A. A JURY MUST DETERMINE WHETHER THE ALLEGED SETTLEMENT AGREEMENT AND RELEASE IS VALID.

The rules of law and practice require a trial by jury as provided in the U.S. Constitution, Amendment VII which

states: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." In *Dice v. Akron, Canton & Youngstown R.R.*, 342 U.S. 359, 363, 72 S.Ct. 312, 315, 96 L.Ed.2d 398 (1952) the court said "The right to trial by jury is a basic and fundamental feature of our system of jurisprudence" and it held that the issue of fraud in the inducement of a release must be tried to a jury. In *Millner v. Norfolk & Western R.R.*, 643 F.2d 1005, 1010 (4th Cir. 1981) where plaintiff challenged authority of his attorney to enter into a settlement agreement, the Fourth Circuit reversed and said: "The validity of the settlement must be tried to a jury."

Petitioner raised questions of fact challenging Atty. Ingram's assumed authority to negotiate a settlement agreement or to execute it on her behalf. ILLINOIS LAW AND PRACTICE CHAPTER 1 AGENCY § 5 EVIDENCE IN AGENCY states: "There is no presumption of agency; it must be proved or inferred from facts proved." The employment agreement between petitioner and attorney Ingram clearly states that it was for the purpose of his representing her in Chapter 11 proceedings in the U.S. Bankruptcy Court for the Northern District of Illinois Western Division, making him a limited special agent. In *McAtee v. Perrine*, 48 Ill.App. 548 (1892), the court said: "An agent whose authority is confined to a single transaction is commonly denominated a special agent. The principal of such an agent is bound only so far as his acts are strictly in accordance with the authority given him." In *Siekmann v. Stanton*, 251 Ill. App. 442 (1928), the court said: "The authority granted by a special agency must be

strictly pursued, and the principal is not bound if the agent exceeds it."

Petitioner never authorized or signed the alleged settlement agreement. When Mr. Ingram faxed it to her and told her to sign it on a line provided under her printed name, she refused and evidence of both copies shows that he printed a second version of the document wherein he changed the signature page by typing, "By Forest Ingram Her Attorney," under that line and signing his own name, without informing her of what he had done. In *Lawcock v. U.S. Trotting Ass'n*, 204 N.E.2d 802, 55 Ill.App.2d 211 (1965), the court said: "Unratified contract not actually or apparently authorized by principal does not impose duty or liability upon principal." and "An agent's opinion as to his authority to act for principal, or his unfounded assumption of authority, will not bind the principal." C.J.S. AGENCY § 255 EFFECT OF IMPROPER EXECUTION a. Simple Contracts says: "An agent who executes a contract containing apt words to bind him and who signs his own name instead of that of his principal, even though he intends to bind the latter, becomes himself liable and the contract is considered as his own; and this is so although it is recited that he acts as agent and although the other party knows that he acts as such. He is also liable if he so executes the contract as to bind both himself and his principal."

"In *Turner v. Burlington Northern R. Co.*, 771 F.2d 341 (8th Cir. 1985) the court said: "An attorney of record may not compromise, settle, or consent to a final disposition of his client's case without express authority." ILLINOIS LAW AND PRACTICE CHAPTER 3 AGENCY § 92 LIABILITY OF PRINCIPAL FOR AGENT'S UNAUTHORIZED

ACTS says: "A principal ordinarily is not bound by acts of an agent outside the scope of his actual or apparent authority." In § 67 AUTHORITY TO MAKE CONTRACTS: "The acts of an agent in making a contract with a third person in behalf of his principal bind the principal only where such acts are within the express, implied, or apparent authority of the agent." In § 91 IN GENERAL: "Persons dealing with known or assumed agents are bound at their peril to ascertain the fact of agency and the extent of the authority of the agent."

Mr. Ingram told petitioner that Mr. Langone was threatening sanctions because of the Chapter 11 filing and told her to sign to avoid costly threatened sanctions. She refused and told him to stop all negotiations for any such settlement. In *Lerk v. McCabe*, 1932, 182 N.E. 388, 349 Ill. 348 the court said: "The burden of proof is upon the one receiving the benefit to show an absence of undue influence by establishing such facts as will satisfy the court that the dealing was at arm's length, or that the transaction was had in the most perfect good faith and was equitable and just between the parties."

During the June 30, 1997 hearing in circuit court, Judge Vecchio announced from the bench: "I saw the settlement agreement that was signed by the attorneys which should have been signed by the parties . . . I guess I have one question here. If my summary is so accurate, who paid the $10,000?" (R.000374) and "I do agree that it would have been best for the parties to have signed that agreement." (R.000377) Not only would it have been "best," it would have been legal and binding. There is absolutely no mention of any payment to Ezra Trull in the billing records Mr. Ingram sent to petitioner, indicating

that the $10,000 was a secret payment arranged between the two attorneys as a response to Mr. Langone's threats and petitioner never found out about it until months after it was done.

It is a long recognized rule that questions of law are for the court and questions of fact are for a jury to decide. The appellate court erred when it acted as both judge and jury and took it upon itself to decide that petitioner's failure to inform the opposing party or counsel that Ingram was without authority to negotiate for her (App. 8) or to raise a legal objection for over ten months before filing her cause of action for fraud (App. 9) indicates that her silence and inaction ratified the settlement, without allowing a jury to hear both sides and make the decision as to why petitioner acted as she did. The facts show that it was not possible for her to be aware of anything that was happening that would prompt her to any such action. In fact, Mr. Ingram had told petitioner she was never to speak with any of the people involved or their attorneys because that was his job, and she followed his instructions.

It is up to a jury to decide if a reasonable person would believe, under the circumstances, ten months to be overly long when there was absolutely no way that petitioner could have been aware of Mr. Ingram's actions any earlier because he never informed her of what he was doing and the alleged settlement was not done under any court direction or supervision that might have brought it to her attention. In *Horbach v. Kaczmarek*, 915 F.Supp. 18 (N.D.Ill. 1996) the court said: "Under Illinois law, pursuant to 'discovery rule,' plaintiff has five years to file suit from point that he knew or reasonably should know

that he has been injured and that his injury was wrongfully caused." Petitioner trusted Mr. Ingram, as any client would, to keep her informed of what he was doing, but he did not. As soon as she became aware of what he had done, she did act using the only legal response she had left to her by filing *pro se* Complaint No. 97-L-74, a cause of action for fraud.

In *Moore v. Pinkert,* 1961, 171, N.E.2d 73, 28 Ill. App.2d 320 the court said: "The agent in exercise of good faith is bound to keep his principal informed on all matters that may come to his knowledge pertaining to subject matter of the agency. An agent must not put himself, during continuance of his agency, in a position adverse to that of his principal." The settlement agreement and release, in fact, took away everything awarded to petitioner that had not been turned over to her, including future maintenance upon which she was dependant for her livelihood (she is now age 69) while giving respondent Ezra Trull $10,000 for no apparent reason except to remove the threat of sanctions against Mr. Ingram by Mr. Langone, along with terminating all of his obligations to petitioner that the court had awarded to her.

ILLINOIS LAW AND PRACTICE CHAPTER 5 AGENCY § 133 ADVERSE INTEREST, AND COLLUSION OR FRAUD, OF AGENT states: "Notice to the agent is not notice to the principal where the facts authorize the inference that the agent will conceal the information from his principal, as where his interests are adverse to those of the principal." At this point Mr. Ingram had abandoned petitioner's interests and was acting to protect himself

against Mr. Langone's threats concerning his professional conduct in filing the Chapter 11.

In *Easterday v. Marchman,* 1962, 36 Ill.App.2d 321 the court said: "A person who relies upon an agent's act has the burden of proving the authority upon which the agent acted if he is to charge the principal. This authority must be established by a preponderance of the evidence."

ILLINOIS LAW AND PRACTICE defines questions that should be decided by a jury and include in CHAPTER 1 AGENCY § 8 QUESTIONS OF LAW AND FACT: "The existence, and the nature and extent, of an agency are questions of fact or mixed questions of law and fact. CHAPTER 3 AGENCY § 69 QUESTIONS FOR JURY states: "As a general rule questions concerning the nature and extent of an agent's authority and whether the particular act in controversy was within the scope of his authority are questions of fact for the determination of the jury."

Library references include C.J.S. AGENCY § 546 QUESTIONS OF LAW AND FACT which states: "What facts constitute one an agent is a question of law, but whether the necessary facts exist on which an agency may be based is a question of fact for a jury to determine." C.J.S. AGENCY § 547 EXISTENCE OF AGENCY states: "Where evidence is conflicting, the question of whether an agent is authorized to act for the principal is a question of fact to be submitted to the jury."

In *Faber-Musser Co. v. Dee Clay Co.,* 1920, 126 N.E. 186, 291 Ill. 240, and *Law Reporting Co. v. S. W. Straus & Co.,* 1922, 226 Ill. App. 461, the court said: "Whether an agent

has express authority to do a certain thing is a question of fact for the jury."

B. A JURY MUST DETERMINE WHETHER THE CLAIM OF ESTOPPEL IS VALID.

The appellate court relied upon statements by respondents who claimed that the issues raised in the cause of action for fraud had been considered previously and ruled on (1) by Judge Peterson in the circuit court and (2) by a prior decision in the appellate court, and so constituted estoppel that bars the cause of action for fraud.

In *Easterday v. Marchman*, 36 Ill.App.2d 321 (1962) and in *Bovaird Supply Co. v. McClement*, 32 Ill.App.2d 224, 238, 177 NE2d 430, 436 (1961), the court said: "in order to rely on estoppel, the proof must be clear and unequivocal." The appellate court acted as both judge and jury when it decided that the elements of estoppel were present (App. 10) without allowing a jury to hear arguments from both sides and decide whether the facts were clear, unequivocal, and material to warrant that conclusion.

(1) Judge Peterson relied upon the deliberate misrepresentation of material facts by respondent Katz, refusing to allow petitioner to present evidence to the contrary, when he decided that the deeds reflected the order of the court despite the fact that the stipulated appraiser stated that they did not. Whether that reliance caused the court to become a victim of the fraud along with petitioner, and whether that decision therefore should be allowed to stand unchallenged, is for a jury to decide.

(2) The appellate court relied upon respondents' unsubstantiated and misrepresented statements when it decided that a prior appellate court had confirmed that the deeds were accurate, which is contrary to the record which shows that the appellate court never confirmed or denied the validity of the deeds but refused to consider the issue because it had not been timely presented. That court said: "Otherwise we deny the motion because the proposed additions are from proceedings following the appeal here. We do not consider evidence generated after the notice of appeal. (R. C000224) The record shows that the appellate court never considered the issue of the deeds. In *Lorber v. Vista Irr. Dist.*, C.C.A.Cal., 127 F.2d 628, 634 (9th Cir. 1942), the court said: "in a later action upon a different cause of action, a judgment operates as an estoppel only as to such issues in the second action as were actually determined in the first action." It is up to a jury to consider the record and facts and decide whether the court made any such decision which would enable a legitimate claim of estoppel.

The record shows that until petitioner filed her cause of action for fraud, No. 97-L-74, on March 5, 1997, that issue was never addressed in any court at any time. In *George E. Kennedy Construction Co. v. City of Chicago*, 112 Ill.2d 70, 77, 491 N.E. 2d 1160 (1986), the court said: "It is axiomatic that questions not raised in the trial court cannot be raised for the first time on appeal and are waved." The appellate court never considered the cause of action for fraud.

This court should be reminded that respondents never denied that the deeds were fraudulent, but used

false and misleading statements upon which Judge Peterson and the appellate court relied to bar petitioner's cause of action for fraud and thereby obstruct justice and deny to her due process of law. The validity of the disputed alleged settlement agreement and claim of estoppel must be decided by a jury before taking the drastic action of baring petitioner from pursuing her undisputed cause of action for fraud.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the Court grant certiorari to the Appellate Court of Illinois Second District.

Respectfully submitted,

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APPENDIX A

STATE OF ILLINOIS

CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT

WINNEBAGO COUNTY

Louise Trull	)	
	)	
-vs-	)	Case No. 97-L-74
Ezra E. Trull, Ethan E.	)	
Trull, and P. André Katz	)	

ORDER

THIS CAUSE COMING TO BE HEARD ON DEFENDANTS' RESPECTIVE MOTIONS TO DISMISS AND THE COURT BEING FULLY ADVISED OF THE PREMISE;

IT IS HEREBY ORDERED THAT THIS CAUSE IS DISMISSED WITH PREJUDICE FOR THE FOLLOWING REASONS:

1. This action is barred by a previous settlement agreement and release.

2. This cause and the issues raised therein have previously been considered and ruled upon by Judge Petersen and the Illinois Appellate Court.

It is further ordered that defendants' motions for Rule 137 sanctions are denied.

Dated: 6-30-97

/s/ Steven Vecchio
JUDGE

APPENDIX B

No. 2-97-1012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LOUISE B. TRULL, Plaintiff-Appellant, v. EZRA E. TRULL, ETHAN E. TRULL, and P. ANDRE KATZ, Defendants-Appellees.	)	Appeal from the Circuit Court of Winnebago County. No. 97-L-74 Honorable Steven G. Vecchio, Judge, Presiding.

RULE 23 ORDER

(Filed Jun 9, 1998)

On March 5, 1997, the plaintiff, Louise B. Trull, filed this action against the defendants, Ezra E. Trull, Ethan E. Trull and Andre Katz, alleging fraud in connection with the deeds that were prepared to divide Louise and Ezra's marital real estate pursuant to a judgment of dissolution. The defendants filed motions to dismiss pursuant to section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 1996)). The trial court granted the motions and dismissed Louise's cause of action with prejudice. In so doing, the trial court found that Louise's claim was barred by a previous settlement agreement releasing the defendants and by the fact that the issues raised in her complaint were previously decided in the

divorce proceeding and in a prior appeal to this court. Louise appeals. We affirm.

The record reveals that as part of the property division in the divorce proceeding the trial court divided the 20-acre marital real estate by awarding Louise five acres of improved property as set out in an appraisal that was incorporated into the order. The court awarded the remaining 15-acres of adjoining, unimproved property to Ezra. According to Louise's fraud complaint, the valuation opinion of the appraiser was based on the natural configuration of the 20-acre parcel which was comprised of a 5-acre homestead site and 15 acres of surrounding unimproved farm land. Louise's portion was valued at $290,000 and Ezra's portion was valued at $60,000. Louise alleged that the defendants had the property surveyed and then prepared deeds which did not conform to the order of the court and the stipulated appraisal.

On March 8, 1995, the trial court, in the dissolution proceeding entered a final judgment, confirming an order granting Ezra's motion for execution of the warranty deeds. At the hearing on March 8, 1995, defendant Katz, an attorney representing Ezra during the proceedings, told the court that the deeds conformed to the trial court's order. Louise appeared *pro se* at that hearing and the court entered its order despite Louise's objections that she needed more time to have an attorney examine the deeds. On March 29, 1995, Louise filed a motion to reconsider the court's March 8, 1995, order. At a subsequent hearing, attorney Katz represented that the deeds reflected "the way [the appraiser] has always dealt with this property and valued it." Louise attempted to submit evidence that the deeds were incorrect. The trial court,

however, found that it would not consider Louise's arguments and new evidence at that late juncture.

Thereafter, Louise appealed the trial court's allocation of the marital property, including the issue of the execution of the allegedly inaccurate warranty deeds. On February 13, 1996, this court issued a Rule 23 order affirming the decision of the trial court. In so doing, this court ruled that Louise's contention with respect to the correctness of the deeds was "waived and meritless."

At some point, Louise filed a petition pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 1996)) seeking to vacate the trial court's judgment allocating the marital property. In her memorandum in support of her petition, Louise argued, among other things, that the judgment should be vacated due to fraud in the drafting of the deeds. She stated that the plat of survey prepared for the purpose of preparing Ezra's two deeds configured the homestead in a far different fashion than what could be described as "improved property" and eliminated most of the extensive front yard to the south and instead included a large portion of farmland to the east of the improved area. She claimed that Ezra purposely had the survey done to fraudulently misrepresent the land that had been defined as homestead and deprive her of the more valuable river front property while enhancing the value of Ezra's property.

In their motion to dismiss Louise's fraud complaint, the defendants asserted that Louise's claim was barred by a settlement agreement that released the defendants from liability in connection with the claim. They also assert that the issue was previously decided in their favor in the

divorce litigation and then affirmed on appeal. The defendants attached to their motion to dismiss a settlement agreement that purported to be entered into "by and between" Ezra and Louise as of April 1, 1996. However, the document is not signed by either party. Instead it is signed by their respective attorneys.

The April 1, 1996, settlement agreement provided in part:

> "The Parties, on their own behalf and on behalf of their heirs, executors, legal representatives, attorneys, administrators, successors and assigns, hereby mutually and generally release each and every other party and each and every other party's respective heirs, executors, legal representatives, attorneys, administrators, successors, and assigns, of and from all claims, demands, actions, causes of action, debts, obligations and liabilities of any nature, existing or potential, known or unknown, at law or in equity, arising from the beginning of the world to the date of the execution of this Agreement, including but not limited to, all claims asserted, or which could have been asserted in connection with, relating to or arising from the Lawsuits."

The settlement also specifically provided that Louise agreed to "withdraw, with prejudice" her pending section 2-1401 petition and her action in bankruptcy court. Louise's attorney, Forest Ingram, had Louise's 2-1401 petition dismissed with prejudice on May 6, 1996.

On appeal, Louise makes numerous *pro se* arguments. She essentially contends that the trial court erred in dismissing her cause of action for fraud and thereby denied her an opportunity to present her claims before a jury.

Specifically, she argues that: (1) she was not bound by the settlement agreement because she informed her attorney that she would not sign it and that without her knowledge he proceeded to conduct further negotiations with respect to the settlement, signing it on her behalf; (2) the appellate court in its February 13, 1996, Rule 23 order did not make a ruling on the merits with respect to the issue involving the execution of the warranty deeds and Louise's arguments that the deeds were incorrect; (3) defendant Katz erroneously argued that Louise failed to allege sufficient facts to show that his conduct was fraudulent; and (4) since Ethan (Louise and Ezra's son and a defendant in this case) was not Ezra's attorney, he was not released by the settlement.

A defendant may file a motion to dismiss a plaintiff's cause of action on the basis that the action is barred by a prior judgment or that the claim set forth in the plaintiff's pleading has been released. 735 ILCS 5/2-619(a)(4), (6) (West 1996). All well-pleaded facts are deemed admitted. *Becker v. Zeller,* 292 Ill. App. 3d 116, 112 (1997). The purpose of a section 2-619 motion to dismiss is to provide a mechanism to dispose of issues of law or easily proved issues of fact, and the cause of action should not be dismissed on the pleadings unless it is clearly apparent that no set of facts can be proved which will entitle the plaintiff to recover. *Geick v. Kay,* 236 Ill. App. 3d 868, 874 (1992). On appeal, we conduct a *de novo* review of the granting of a section 2-619 motion to dismiss. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge,* 156 Ill. 2d 112, 116 (1993).

Settlement agreements are encouraged by courts and should be given full force and effect as a means of ending

on-going litigation. See *Kazale v. Kar-Lee Flowers,* 185 Ill. App. 3d 224, 227 (1989). The case law recognizes that a settlement agreement is a contract and its enforcement and construction are governed by contract law. *City of Chicago Heights v. Crotty,* 287 Ill. App. 3d 883, 885 (1997). A general release which sets forth the facts upon which the release is based will be interpreted to release all known claims relating to those facts. *Garvey v. McMahon & Elliot,* 283 Ill. App. 3d 484, 487 (1996).

In general, a client is bound by the acts or omissions of his attorney within the scope of the attorney's authority. *In re Marriage of Marr,* 264 Ill. App. 3d 932, 935 (1994). The authority of an agent may be presumed from the silence of the alleged principal when she knowingly allows another to act for her as her agent, and the agent's scope of authority may be determined by what persons of reasonable prudence, ordinarily familiar with business practices, dealing with the agent, might rightfully believe him to have on the basis of the principal's conduct. *Sakun v. Taffer,* 268 Ill. App. 3d 343, 351 (1994). Where the principal places an agent in a situation where he may be presumed to have authority to act for her, the principal is estopped as against a third person from denying the agent's apparent authority. *Sakun,* 268 Ill. App. 3d at 351.

Even if an attorney exceeds his authority in signing a settlement agreement on behalf of a client, the client may be deemed to have ratified the agreement by his subsequent actions. *The City of Burbank v. Illinois State Labor Relations Board,* 185 Ill. App. 3d 997, 1003 (1989). Ratification occurs upon the express or implied adoption of the acts of another by one for whom the other assumes to be acting, even without authority; the consequences are the

same as if the acts ratified had been authorized in the beginning. *City of Burbank,* 185 Ill. App. 3d at 1003. The principal can ratify the actions of his agent by not repudiating such acts once he has knowledge of them or by accepting the benefits of those acts. *City of Burbank,* 185 Ill. App. 3d at 1003.

In the instant case, Louise claims that attorney Ingram did not have apparent authority to settle her pending claims and that she retained him only to render services with respect to the bankruptcy proceeding. We find, however, that Louise's contentions are belied by the record. Louise was aware that Ingram was attempting to conduct negotiations on her behalf with respect to the settlement, yet she never communicated to the opposing party or counsel that he was without authority to do so. More importantly, she placed Ingram in a position whereby it might be presumed that he had authority to act on her behalf. Ingram had prepared and signed various pleadings in the divorce litigation, including Louise's memorandum in support of her section 2-1401 petition to vacate the final judgment. He also struck portions of the proposed settlement agreement.

Furthermore, even if Louise's attorney exceeded his authority in signing the settlement, Louise ratified the agreement *vis-a-vis* the defendants by her subsequent actions in failing to set aside the May 6, 1996, dismissal of her 2-1401 petition. It is clear that Louise had a duty independent of that of her attorney to follow the progress of her case and to take action when her counsel was inactive or took actions contrary to her wishes. See *Sakun,* 268 Ill. App. 3d at 350. Instead of seeking to vacate the dismissal of her section 2-1401 petition, Louise filed this

complaint for fraud over 10 months later. Under the circumstances, we find that she ratified the settlement by her silence and inaction. Thus, Louise was estopped from denying her agent's apparent authority with respect to third persons such as the defendants in this case. Parenthetically, we note that assuming Louise's allegations are accurate with respect to her attorney's conduct in settling her claims against her specific directions, she might have valid claims against her attorney for malpractice and breach of a fiduciary duty provided the statute of limitation has not run. See *Belden v. Emmerman*, 203 Ill. App. 3d 265, 268 (1990).

We further find that the settlement barred Louise's present fraud claim and that the trial court properly granted the defendants' motions to dismiss pursuant to section 2-619 of the Code. Despite Louise's contentions to the contrary, she was not entitled to a jury trial on the merits of her claim because one of the purposes of a section 2-619 dismissal is to provide a mechanism to dispose of a cause of action without a jury trial if the current claim has been released by a prior settlement. See 735 ILCS 5/2-619 (West 1996). The settlement agreement at issue here specifically released all claims against Ezra and Ezra's attorney, Katz. The settlement also released all claims against Ezra's "heirs." Black's Law Dictionary defines "heirs" as "a technical term * * * used to designate persons who would, by statute, succeed to an estate in case of intestacy." Black's Law Dictionary 724 (6th ed. (1990)). We find that Ethan fits the definition of an heir and was therefore also released from liability in connection with the present claim.

Additionally, we find that Louise's claim against Ezra was barred by the doctrine of collateral estoppel. Collateral estoppel precludes a party from litigating an issue decided in a prior proceeding. The elements that must be satisfied before a trial court may determine that a prior adjudication precludes litigation of an issue in the case before it: (1) the issue decided in the prior suit is identical with the one presented in the pending suit; (2) a final judgment on the merits was reached in the prior adjudication; and (3) the party against whom the estoppel is asserted was either a party or in privity with a party in the prior lawsuit. *Talarico v. Dunlap*, 177 Ill. 2d 185, 191-92 (1997).

The issues here are identical to those raised in Louise's section 2-1401 petition to vacate. There, she alleged the same conduct in procuring the deeds that she does in the present case. Second, there was a final adjudication on the merits because a section 2-1401 proceeding is a separate proceeding *(Krol v. Wincek*, 258 Ill. App. 3d 706, 708 (1994)) and a dismissal of a complaint with prejudice based on a settlement agreement is a final judgment on the merits *(People ex rel. Ulrich v. Bosmann*, 279 Ill. App. 3d 36, 45 (1996)). Finally, Louise and Ezra were among the parties involved in both actions. Thus, collateral estoppel applies to bar Louise's present claim against Ezra.

We now turn to the defendants' arguments that the trial court erred in denying their motion for sanctions pursuant to Supreme Court Rule 137 (155 Ill. 2d R. 137) and that this court should impose sanctions upon Louise for filing a frivolous appeal.

The purpose of Rule 137 is to penalize litigants who plead frivolous or false matters or bring suit without any basis in law. *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 946 (1992). Similarly, Supreme Court Rule 375(b) provides that sanctions may be imposed upon a party if after consideration of any appeal it is determined that the appeal is frivolous. 155 Ill. 2d R. 375(b). The imposition of sanctions under Rule 137 is left to the discretion of the trial court, and the rule grants the court discretion in deciding whether to impose sanctions even if a violation is found. *In re Marriage of Sykes*, 231 Ill. App. 3d at 946.

We find that the trial court did not abuse its discretion in denying the defendants' motion for sanctions. Furthermore, we do not deem Louise's appeal or the issues raised thereby to be frivolous. Accordingly, we deny the defendants' requests for sanctions.

Our resolution of the foregoing issues renders moot the remaining issues raised by Louise on appeal. Accordingly, we affirm the judgment of the circuit court of Winnebago County dismissing Louise's complaint.

Affirmed.

THOMAS, J., with BOWMAN AND RATHJE, J.J., concurring.

APPENDIX C

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

86042

October 6, 1998

Ms. Louise B. Trull
900 North Prairie Avenue
Rockton, IL 61072

No. 86042 – Louise B. Trull, petitioner, v. Ezra E. Trull et al., respondents. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1998.

APPENDIX D

[LOGO]

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING

SPRINGFIELD 62701

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035
TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(217) 524-8132

FIRST DISTRICT COURT
20TH FLOOR
160 NO. LASALLE ST.
CHICAGO 60601
(312) 793-1332
TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(312) 793-1333

November 9, 1998

Ms. Louise B. Trull
900 North Prairie Avenue
Rockton, IL 61072

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 86042 – Louise B. Trull, petitioner, v. Ezra E. Trull et al., respondents.

Motion by petitioner, pro se, for stay of mandate pending the filing of a petition for writ of certiorari in the United States Supreme Court. Motion *allowed*.

JH/jat
cc: Mr. Brent R. Austin

Supreme Court, U.S.
FILED
JAN 18 1999

No. 98-971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

LOUISE B. TRULL,

Petitioner,

vs.

EZRA E. TRULL, ETHAN E. TRULL
and P. ANDRE KATZ,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENT P. ANDRE KATZ

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The instant Petition is the latest in a long line of heretofore failed challenges to the final judgment in a divorce proceeding. Petitioner, Louise B. Trull ("Trull"), is disappointed with the court-ordered division of a parcel of real property. She has appealed that division repeatedly, and her arguments have been universally rejected. Trull's claims arise strictly in state common law. She alleges that her former husband, her own son, and her husband's divorce lawyer, Respondent Andre P. Katz ("Katz"), somehow defrauded her in procuring this court-ordered property division. While Trull's claims are meritless on their own terms, they involve no federal question — important or otherwise — and are not entitled to review by this Court. Sup. Ct. Rule 10. Trull attempts to characterize the dismissal of her fraud claims on a motion to dismiss at the pleadings stage as the denial of her right to a jury trial. This attempt, like the other challenges, is groundless.

Although Trull's petition arises from her recent suit alleging fraud by the respondents, her challenges to the property division were first adjudicated long before this. Specifically, an Illinois divorce court entered a final judgment dividing the property in question, over Trull's objections, on March 3, 1995. App. 3; Pet. 2-3. Trull moved the court to reconsider the division but the divorce court rejected her motion as untimely on March 29, 1995. App. 3-4. Trull then appealed the property division and the Appellate Court of Illinois affirmed the property division on February 13, 1996 — calling Trull's challenge "*waived and meritless.*" App. 4 (emphasis added).

Trull also independently petitioned to vacate the property division pursuant to 735 ILCS 5/2-1401 (West 1996). The stated basis for her petition was alleged fraud by her son, Respondent Ethan E. Trull. App. 4. Thereafter, Trull negotiated, through her counsel, a full settlement on April 1, 1996. The settlement agreement granted a full release of all her claims, including

claims against the attorneys of Trull's former husband — one of whom was Respondent Katz. The settlement agreement also provided that Trull agreed to "withdraw, with prejudice" her petition to vacate. In fact, Trull's attorney had the petition dismissed with prejudice on May 6, 1996. App. 5.

Only after all this transpired, and acting *pro se*, Trull filed the underlying fraud claim against the three respondents on March 5, 1997. This time, in her continued attack on the court-ordered division of the real property between herself and her former husband, Trull alleged fraud in connection with the deeds. The respondents moved to dismiss at the pleadings stage. App. 2. That motion to dismiss was heard by the trial court, and granted on June 30, 1997. The trial court's bases for granting the motion were that the action was barred by the settlement agreement, and Trull's claims had already been rejected twice — by the divorce court, and by the Illinois Appellate Court. App. 1-3.

Trull again appealed. Again the Illinois Appellate Court rejected Trull's claims and affirmed the order of dismissal. Upon *de novo* review, the Appellate Court agreed that the settlement agreement barred all of Trull's claims, that the doctrine of collateral estoppel barred her claims against her son, Respondent Ethan Trull, and that Trull was not entitled to a jury trial because the very purpose of such a motion to dismiss "is to provide a mechanism to dispose of a cause of action without a jury trial if the current claim has been released by a prior settlement." App. 6-9; *see also* 735 ILCS 5/2-619(6) (involuntary dismissal at the pleading stage where claim "has been released . . .") (West 1996). On appeal, Trull argued that her attorney at the time exceeded his authority in procuring the settlement, although Trull never chose to raise a claim against her attorney in the proceeding. The Appellate Court rejected this argument because clients are bound by the acts of their

attorneys, because Trull placed her attorney in a position of apparent authority to negotiate the settlement with opposing counsel, and because Trull subsequently ratified the actions of her attorney anyway. App. 7-9.

Yet again, Trull appealed. Her petition to the Illinois Supreme Court was denied on October 6, 1998. App. 12. As a last resort, Trull filed the instant Petition for Writ of Certiorari on December 14, 1998.

It is abundantly clear that Trull received more than a fair and complete hearing of her "waived and meritless" claims by the Illinois courts. Trull's challenge to her divorce decree sounds in tort, and was rejected both on the merits, and on common law grounds of release, agency, ratification, and estoppel. These claims are not entitled to further review by this Court. None of the primarily Illinois state court decisions cited in Trull's Petition raise the specter of a federal, much less constitutional, question.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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